

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Telecommunications Carriers Eligible for	)	WC Docket 09-197
Universal Service Support	)	
	)	
Standing Rock Telecommunications, Inc.	)	
Petition for Designation as an Eligible	)	
Telecommunications Carrier	)	
	)	
Petition of Standing Rock Telecommunications,	)	
Inc. to Redefine Rural Service Areas	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: August 24, 2010**

**Released: August 24, 2010**

By the Chief, Wireline Competition Bureau:

**I. INTRODUCTION**

1. In this order, we designate Standing Rock Telecommunications, Inc. (Standing Rock), a wireless carrier owned and operated by the Standing Rock Sioux Tribe, as an eligible telecommunications carrier (ETC) in certain wire centers within the boundaries of the Standing Rock Sioux Reservation (Standing Rock Reservation or Reservation). This action will enable Standing Rock to qualify to receive both high-cost and low-income universal service support. The company seeks to bring wireless service to the very sparsely populated Standing Rock Reservation, which straddles the border of North Dakota and South Dakota, and to provide consumers living on the Reservation with choices that are not widely available today.

2. The Commission shares a historic federal trust relationship with federally recognized Tribes and has a longstanding policy of promoting Tribal self-sufficiency and economic development and of helping ensure that Tribes have adequate access to communications services.<sup>1</sup> Tribal governments play a vital role in serving the needs and interests of their local communities, often in remote, low-income, and underserved regions of the country. Owning and operating critical communications infrastructure will empower the Standing Rock Sioux Tribe to protect the health and safety of Tribal consumers, to spur local economic development, to preserve Tribal language and culture, and to further the education of consumers through federal distance education programs. We conclude, therefore, that designating Standing Rock as an ETC furthers the goals of universal service and will serve the public interest by enabling Standing Rock to provide critically needed services tailored to the needs and interests of the Tribe's local communities.

<sup>1</sup> *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, Policy Statement, 16 FCC Rcd 4078, 4080–81 (2000) (*Tribal Policy Statement*).

## II. BACKGROUND

### A. Jurisdiction to Designate ETCs on Tribal Lands

3. The Communications Act of 1934, as amended (Act), seeks to ensure that low-income consumers and those in rural, insular, and high-cost areas, have access to services that are reasonably comparable to those enjoyed by urban consumers at reasonably comparable rates.<sup>2</sup> A telecommunications carrier must be designated as an ETC and must offer services throughout its entire service area in order to receive universal service support.<sup>3</sup> Although state commissions have primary responsibility for designating ETCs,<sup>4</sup> that responsibility shifts to the Commission for carriers “providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission.”<sup>5</sup>

4. The Commission has established a framework for determining whether a state commission or the Commission itself has jurisdiction to designate ETCs on Tribal lands.<sup>6</sup> First, a carrier serving Tribal lands must petition the Commission for a determination on whether the state has jurisdiction over the carrier.<sup>7</sup> The Commission then determines whether the carrier is subject to the jurisdiction of a state commission or whether it is subject to a Tribal authority given the Tribal interests involved. In the latter case, the Commission has jurisdiction to designate the carrier as an ETC<sup>8</sup> and will proceed to consider the merits of the carrier’s petition for designation.<sup>9</sup>

### B. Commission Rules for ETC Designation and Redefinition of Service Areas

5. *ETC Designation.* Pursuant to the Act, the Commission may, with respect to an area served by a rural telephone company,<sup>10</sup> and shall, in all other cases, designate more than one common

<sup>2</sup> 47 U.S.C. § 254(b)(3).

<sup>3</sup> 47 U.S.C. § 254(e) (stating that only an ETC is “eligible to receive specific Federal universal service support”).

<sup>4</sup> 47 U.S.C. § 214(e)(2); *see Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas; Smith Bagley, Inc., Cheyenne River Sioux Tribe Telephone Authority, Western Wireless Corporation, Wyoming, Cellco Partnership d/b/a/ Bell Atlantic Mobile, Inc., Petitions for Designation as an Eligible Telecommunications Carrier and for Related Waivers to Provide Universal Service*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12255, para. 93 (2000) (*Twelfth Report and Order*), *recon. by Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twenty-Fifth Order on Reconsideration, Report and Order, Order, and Further Notice of Proposed Rulemaking, 18 FCC Rcd 10958 (2003) (*Tribal Recon. Order*).

<sup>5</sup> 47 U.S.C. § 214(e)(6); *see, e.g., Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 1563 (2004) (*Virginia Cellular Order*); *Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 6422 (2004) (*Highland Cellular Order*).

<sup>6</sup> *Twelfth Report and Order*, 15 FCC Rcd at 12265–69, paras. 115–27; *Tribal Recon. Order*, 18 FCC Rcd at 10964 n.28.

<sup>7</sup> *Twelfth Report and Order*, 15 FCC Rcd at 12265–69, paras. 115–27.

<sup>8</sup> *Id.* at 12266–12267, paras. 120–22.

<sup>9</sup> *Id.* at 12265, para. 115.

<sup>10</sup> Section 3 of the Act defines a rural telephone company as a local exchange carrier operating entity to the extent that such entity:

- (A) provides common carrier service to any local exchange carrier study area that does not include either—
  - (i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or

(continued . . .)

carrier as an ETC for a service area so long as the requesting carrier meets certain requirements.<sup>11</sup> In addition, the Commission must determine that a designation is in the public interest before designating a competitive ETC in an area served by a rural telephone company.<sup>12</sup>

6. A carrier seeking designation from the Commission must: (1) certify and briefly state facts demonstrating that it is not subject to the jurisdiction of a state commission; (2) certify that it offers or intends to offer all services designated for support by the Commission; (3) certify that it offers or intends to offer the supported services using either its own facilities or a combination of its own facilities and resale of another carrier's services throughout its proposed service area; (4) describe how it will advertise the availability of supported services and the charges therefor using media of general distribution; and (5) describe in detail the geographic service area for which it requests designation if the carrier is not a rural telephone company.<sup>13</sup> In addition, such a carrier must demonstrate: (6) a commitment and ability to provide services, including providing service to all customers within its proposed service area; (7) how it will remain functional in emergency situations; (8) that it will satisfy consumer protection and service quality standards; (9) that it offers local usage comparable to that offered by the incumbent local exchange carrier (LEC); and (10) an understanding that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to section 214(e)(4) of the Act.<sup>14</sup> The Commission has delegated authority to the Chief of the Wireline Competition Bureau to act on the Commission's behalf on these matters.<sup>15</sup>

7. *Redefinition of Service Areas.* The Act defines each rural telephone company's service area as the company's entire study area, unless that service area is redefined.<sup>16</sup> In order for a competitive ETC to serve only part of a rural telephone company's service area, the Act requires that the Commission and the appropriate state commission agree to redefine the rural telephone company's service area as one

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- (ii) any territory, incorporated or unincorporated, included in any urbanized area, as defined by the Bureau of the Census as of August 10, 1993;
- (B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;
- (C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or
- (D) has less than 15 percent of its access lines in communities of more than 50,000 on February 8, 1996.

47 U.S.C. § 153(37).

<sup>11</sup> 47 U.S.C. § 214(e)(6). For example, all ETCs must offer and advertise the services supported by the federal universal service mechanisms throughout their designated service areas. 47 U.S.C. § 214(e)(1).

<sup>12</sup> 47 U.S.C. § 214(e)(6); 47 C.F.R. § 54.202(c).

<sup>13</sup> See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, CC Docket No. 96-45, Public Notice, 12 FCC Rcd 22947, 22948-49 (1997) (*Section 214(e)(6) Public Notice*); see also *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, Declaratory Ruling, CC Docket No. 96-45, 15 FCC Rcd 15168 (2000) (*Declaratory Ruling*), recon. pending.

<sup>14</sup> 47 C.F.R. § 54.202(a).

<sup>15</sup> See *Section 214(e)(6) Public Notice*, 12 FCC Rcd at 22948. The Wireline Competition Bureau previously was known as the Common Carrier Bureau.

<sup>16</sup> See 47 U.S.C. § 214(e)(5); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8880-81, paras. 186-88 (1997) (*Universal Service First Report and Order*) (subsequent history omitted).

or more service areas.<sup>17</sup> In contrast, no redefinition is needed for a competitive ETC to serve only part of a non-rural carrier's service area.<sup>18</sup>

8. The Commission's rules set forth the procedures for considering petitions seeking to redefine a rural telephone company's service area. There are two options available under the rules. First, if a state commission has proposed to redefine a rural telephone company's service area, that commission or any interested party may submit the proposed redefinition to the Commission for its approval.<sup>19</sup> After the Commission seeks comment on the proposed redefinition, it evaluates the proposed redefinition and determines whether it should initiate a proceeding. If the Commission has not initiated a proceeding within 90 days of seeking comment on the proposed redefinition, the redefinition is deemed approved by operation of law.<sup>20</sup> In the alternative, the Commission may initiate a proceeding to consider redefining a rural telephone company's service area before a state commission has proposed a redefinition.<sup>21</sup> If the Commission proposes to redefine a rural telephone company's service area, it then submits its proposed redefinition to the appropriate state commission for approval.<sup>22</sup> In either case, a proposed redefinition does not take effect until the Commission and the appropriate state commission agree on a single redefinition.<sup>23</sup> The Commission has delegated authority to the Chief of the Wireline Competition Bureau to act on redefinition petitions.<sup>24</sup>

9. In evaluating the merits of a proposed redefinition, the Commission focuses primarily on minimizing creamskimming<sup>25</sup> and assessing the impact of any redefinition on the ability of the affected rural incumbent LEC to continue to serve its entire service area.<sup>26</sup> As part of its public interest analysis, the Commission requires that proposed service areas encompass a minimum geographical area and favors redefinition if it will promote universal service goals.<sup>27</sup>

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<sup>17</sup> See 47 U.S.C. § 214(e)(5); *Universal Service First Report and Order*, 12 FCC Rcd at 8880–81, paras. 186–88; see also *id.* at 8881, para. 187 (“[T]he plain language of section 214(e)(5) dictates that neither the Commission nor the states may act alone to alter the definition of service areas served by rural carriers.”).

<sup>18</sup> See 47 U.S.C. § 214(e)(5); *Universal Service First Report and Order*, 12 FCC Rcd at 8880–81, paras. 186–88.

<sup>19</sup> 47 C.F.R. § 54.207(c)(1).

<sup>20</sup> 47 C.F.R. § 54.207(c)(3).

<sup>21</sup> 47 C.F.R. § 54.207(d).

<sup>22</sup> 47 C.F.R. § 54.207(d)(1).

<sup>23</sup> 47 C.F.R. §§ 54.207(c)(3)(i), 54.207(d)(2).

<sup>24</sup> 47 C.F.R. § 54.207(e).

<sup>25</sup> A carrier “creamskims” when it serves only those customers that are least expensive to serve. See *Universal Service First Report and Order*, 12 FCC Rcd at 8881–82, para. 189.

<sup>26</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96–45, Report and Order, 20 FCC Rcd 6371, 6392, 6404, paras. 48, 74 (2005) (*ETC Designation Order*), *recon. pending*. The Commission (and the state commissions) must take into account the recommendations of the Federal-State Joint Board on Universal Service. 47 U.S.C. § 214(e)(5); see *Federal-State Joint Board on Universal Service*, CC Docket No. 96–45, Recommended Decision, 12 FCC Rcd 87, 179–80, paras. 172–74 (1996) (considering the potential for creamskimming by competitive ETCs, the Act's concern for maintaining service in areas served by rural telephone companies, and the administrative burdens any redefinition would impose on those carriers).

<sup>27</sup> *Highland Cellular Order*, 19 FCC Rcd at 6438, para. 33. To date, the Commission has required that service areas include entire wire centers of the rural telephone company. See *ETC Designation Order*, 20 FCC Rcd at 6405, para. 77.

### C. Standing Rock's Petitions

10. Standing Rock sets forth the following in its petitions. Standing Rock is a Tribally-owned commercial mobile radio service (CMRS) provider operating within the boundaries of the Standing Rock Reservation.<sup>28</sup> The Reservation encompasses territory located in both North Dakota and South Dakota.<sup>29</sup> Standing Rock is licensed to provide personal communications service throughout the Reservation, and its licensed service area covers parts of the service areas of the following incumbent rural telephone companies operating within the boundaries of the Reservation: Cheyenne River Sioux Tribe Telephone Authority (Cheyenne River), West River Cooperative Telephone Company (West River Cooperative), West River Telecommunications of Mobridge (West River of Mobridge), and West River Telecommunications (West River).<sup>30</sup> Standing Rock's licensed service area also includes part of the study area of Qwest Communications (Qwest), a non-rural telephone company operating within the boundaries of the Reservation.<sup>31</sup>

11. On December 18, 2009, Standing Rock filed a petition seeking ETC designation for a service area consisting of the entire Reservation.<sup>32</sup> Standing Rock contends that the Commission has jurisdiction because neither the North Dakota Commission nor the South Dakota Commission has jurisdiction over a Tribally-owned wireless carrier providing service within reservation boundaries.<sup>33</sup>

12. Concurrent with filing its petition with the Commission, Standing Rock began working with the North Dakota Public Service Commission (North Dakota Commission) and the South Dakota Public Utilities Commission (South Dakota Commission) to redefine the service areas of the rural telephone companies serving the Reservation.<sup>34</sup> On February 18, 2010, Standing Rock filed a petition with the Commission to redefine the service areas of several rural telephone companies—Cheyenne River, West River Cooperative, West River of Mobridge, and West River.<sup>35</sup> Standing Rock asserts that the Commission has the authority to redefine these rural service areas,<sup>36</sup> and argues that doing so comports with federal law, policy, and precedent.<sup>37</sup>

### III. DISCUSSION

13. We conclude that we may, and should, exercise our jurisdiction to consider Standing Rock's petition for ETC designation. In reviewing that petition, we find that Standing Rock has satisfied the Commission's requirements and accordingly designate Standing Rock as an ETC in the wire centers

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<sup>28</sup> Petition of Standing Rock Telecommunications, Inc. for Designation as an Eligible Telecommunications Carrier, WC Docket No. 09-197, at 5–6 (filed Dec. 18, 2009) (Standing Rock ETC Petition).

<sup>29</sup> Standing Rock ETC Petition at 3, 5–6 and Exh. VIII.

<sup>30</sup> Standing Rock ETC Petition at 17.

<sup>31</sup> *Id.*

<sup>32</sup> *See* Standing Rock ETC Petition at 5.

<sup>33</sup> *Id.* at 6.

<sup>34</sup> *Id.* at 3.

<sup>35</sup> Petition of Standing Rock Telecommunications, Inc. to Redefine Rural Service Areas, WC Docket No. 09-197, at 2, Exh. 1 (filed Feb. 18, 2010) (Standing Rock Redefinition Petition). Standing Rock also requested that we redefine Qwest's service area, but the company later withdrew that request, recognizing that Qwest is not a rural telephone company and thus redefinition is not required. *See* Letter from Douglas G. Bonner, Counsel for Standing Rock Telecommunications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-197, at 1 (filed May 14, 2010).

<sup>36</sup> Standing Rock Redefinition Petition at 5.

<sup>37</sup> *Id.* at 5–10.

listed in Appendix B, rendering the company eligible to receive federal universal service support. In addition, we grant Standing Rock's request to redefine the service area of West River to the extent that such redefinition would encompass entire wire centers that West River serves. Consistent with Commission rules, Standing Rock's designation in the three rural telephone company wire centers is conditioned on the consent of the North Dakota Commission to redefinition of West River's service area.<sup>38</sup> To the extent that Standing Rock seeks to serve and redefine rural service areas below the wire-center level, we refer that issue to the full Commission for further consideration.

#### **A. Jurisdiction**

14. Consistent with the framework established in the *Twelfth Report and Order*, Standing Rock filed its petition with the Commission and simultaneously served copies on the North Dakota Commission and the South Dakota Commission.<sup>39</sup> Neither state commission contested the authority of the Commission to consider Standing Rock's ETC designation petition.<sup>40</sup> We conclude that the North Dakota and South Dakota Commissions lack jurisdiction to consider Standing Rock's ETC designation petition, and therefore that the Commission may consider that petition on the merits.

#### **B. Designating Standing Rock an ETC**

15. Having determined that we have jurisdiction over the Standing Rock petition, we now examine whether Standing Rock satisfies the requirements of section 214 of the Act for the requested service areas on the Reservation. As discussed in further detail below, we find that Standing Rock meets the requirements of sections 214(e)(1) and 214(e)(6) of the Act.

##### **1. Offering and Advertising the Supported Services**

16. We conclude that Standing Rock has demonstrated through its filing and certifications that it now offers, or will offer upon obtaining designation as an ETC, the services supported by the federal universal service support mechanisms. Specifically, Standing Rock certifies that it now provides, or will provide upon designation, the services and functionalities enumerated in section 54.101(a) of the Commission's rules throughout the entirety of its designated service area.<sup>41</sup> In addition, Standing Rock has demonstrated that it will offer throughout its service area supported services using its existing network infrastructure or a combination of its own facilities and resale of another carrier's services in compliance with section 214(e)(1)(A) of the Act.<sup>42</sup>

17. Moreover, Standing Rock has demonstrated that it will satisfy the requirement of section 214(e)(1)(B) of the Act by advertising the availability of supported services and related charges using media of general distribution, including local and Tribal newspapers, electronic newsletters, billing inserts, public exhibits, via the Internet on the company's website, and in Tribal offices and public benefits offices.<sup>43</sup> Standing Rock further maintains that it will publicize the availability of supported services to reach all of the residents in its service area and will ensure that customers are aware of the

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<sup>38</sup> See 47 C.F.R. § 54.207(d).

<sup>39</sup> See Standing Rock ETC Petition, Certificate of Service.

<sup>40</sup> In fact, the South Dakota Commission specifically requested that the Commission review Standing Rock's petition on the merits. South Dakota Commission Comments at 2.

<sup>41</sup> Standing Rock ETC Petition at 11–14; see 47 C.F.R. § 54.101.

<sup>42</sup> Standing Rock ETC Petition at 15 and Exh. III; see 47 U.S.C. § 214(e)(1)(A); 47 C.F.R. § 54.201(d)(1).

<sup>43</sup> Standing Rock ETC Petition at 15–16; see 47 U.S.C. § 214(e)(1)(B); 47 C.F.R. § 54.201(d)(2).



availability of the supported services, particularly the Lifeline and Link Up support available to eligible low-income consumers.<sup>44</sup>

## 2. Additional Obligations of Federally Designated ETCs

18. We find that Standing Rock also has agreed to satisfy additional obligations that the Commission requires before designating a carrier as an ETC. That is, Standing Rock has committed to providing service to any requesting customers within its designated service area,<sup>45</sup> has submitted a five-year plan detailing proposed improvements to its network,<sup>46</sup> and has demonstrated its ability to remain functional in emergency situations.<sup>47</sup> Standing Rock also has committed to complying with consumer protection and service quality standards, as well as with the CTIA Consumer Code for Wireless Service;<sup>48</sup> has committed to offer local usage plans among its universal service offerings;<sup>49</sup> and has acknowledged that it may be required to provide consumers with equal access to long-distance carriers.<sup>50</sup>

## 3. Public Interest Analysis

19. We conclude that it is consistent with the public interest, convenience, and necessity to designate Standing Rock as an ETC in the areas set forth below.<sup>51</sup> We conclude that Standing Rock has satisfied its burden of proof in establishing that its universal service offering in this service area will benefit rural and Tribal consumers and is in the public interest.<sup>52</sup>

20. We find that Standing Rock's universal service offering will provide a variety of benefits to consumers, including increased consumer choice and improved quality of service. For example, universal service support will enable Standing Rock to construct facilities and provide wireless services that may not otherwise exist on the Reservation.<sup>53</sup> Moreover, the mobility of Standing Rock's wireless service will provide additional benefits to consumers on the Reservation.<sup>54</sup> For example, access to wireless service will mitigate the health and safety risks associated with living and working in a remote and rural location, where consumers must often drive significant distances for work, school, medical attention, or other needs.<sup>55</sup> Access to wireless communications services will also assist the Tribal Council and law enforcement to ensure public safety during severe weather conditions or natural disasters.<sup>56</sup>

<sup>44</sup> Standing Rock ETC Petition at 16; *see* 47 C.F.R. §§ 54.405(b), 54.411(d).

<sup>45</sup> Standing Rock ETC Petition at 19; *see* 47 C.F.R. § 54.202(a)(1)(i).

<sup>46</sup> Standing Rock ETC Petition Exhs. VIII, XI (confidential); *see* 47 C.F.R. § 54.202(a)(1)(ii).

<sup>47</sup> Standing Rock ETC Petition at 22–23; *see* 47 C.F.R. § 54.202(a)(2).

<sup>48</sup> *Id.* at 23 (citing CTIA, Consumer Code for Wireless Service, *available at* <http://files.ctia.org/pdf/ConsumerCode.pdf>); *see* 47 C.F.R. § 54.202(a)(3).

<sup>49</sup> Standing Rock ETC Petition at 13, 23; *see* 47 C.F.R. § 54.202(a)(4).

<sup>50</sup> Standing Rock ETC Petition at 23; *see* 47 C.F.R. § 54.202(a)(5).

<sup>51</sup> *See infra* para. 25. For the reasons described below, *see infra* para. 29, at this time we do not designate Standing Rock an ETC in the wire centers listed in Appendix C.

<sup>52</sup> *See Virginia Cellular*, 19 FCC Rcd at 1574–75, para. 26; *Highland Cellular*, 19 FCC Rcd at 6431, para. 20. In determining whether the public interest is served in an ETC petition, the Commission places the burden on the ETC applicant. *ETC Designation Order*, 20 FCC Rcd at 6390, para. 44.

<sup>53</sup> *See* Standing Rock ETC Petition at 18–20.

<sup>54</sup> *Id.* at 20.

<sup>55</sup> *Id.*

<sup>56</sup> Letter from Heather Dawn Thompson, Counsel, Standing Rock Telecommunications, Inc. to Marlene H. Dortch, Secretary, FCC, at 2 (filed July 19, 2010) (Standing Rock July 19 *Ex Parte* Letter).

Standing Rock will also provide all of its customers with access to emergency services that are vital to those living in remote rural communities.<sup>57</sup>

21. The Commission has previously recognized that Tribal areas often experience particularly low levels of subscribership because of the very high cost of service, inadequate telecommunications infrastructure, and a lack of competitive service providers.<sup>58</sup> As a Tribally-owned company, we believe that Standing Rock may be particularly well-suited to reaching out to low-income consumers and other residents of the Reservation and could provide an additional option for the provision of telecommunications services.

22. Finally, Standing Rock has requested to serve the entire Reservation and thus we find that creamskimming is not a significant concern here.<sup>59</sup> Although we designate Standing Rock as an ETC in three wire centers served by West River, a rural telephone company, we note that West River has disaggregated and targeted its high-cost support, which minimizes creamskimming concerns.<sup>60</sup> Moreover, Standing Rock has sought only to serve areas within the Reservation, an area where an average of only 2.7 persons reside per square mile.<sup>61</sup> This fact further bolsters our belief that creamskimming is not a concern in this instance.

23. We also waive the requirement that Standing Rock provide the wire center by wire center population density of its proposed service area.<sup>62</sup> Standing Rock has provided us with equivalent information in its filings.<sup>63</sup> Moreover, because strict compliance with the requirement would be

<sup>57</sup> See *id.*; *ETC Designation Order*, 20 FCC Rcd at 6391, para. 44; see also *Twelfth Report and Order*, 15 FCC Rcd at 12212, para. 3.

<sup>58</sup> *Twelfth Report and Order*, 15 FCC Rcd at 12220, para. 20. See also Federal Communications Commission, *Connecting America: The National Broadband Plan* at 152 (rel. Mar. 16, 2010) (NBP or National Broadband Plan, available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-296935A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296935A1.pdf)) (stating that “[m]any Tribal communities face significant obstacles to the deployment of broadband infrastructure”).

<sup>59</sup> See *supra* n.25. We must perform a creamskimming analysis because Standing Rock’s proposed service area differs from the service areas of Cheyenne River Sioux, West River Cooperative, West River of Mobridge, and West River. See 47 C.F.R. § 54.202(c).

<sup>60</sup> See 47 C.F.R. § 54.202(c) (“In its creamskimming analysis, the Commission shall consider other factors, such as disaggregation of support pursuant to § 54.315 by the incumbent local exchange carrier.”); 47 C.F.R. § 54.315 (authorizing rural local exchange carriers to disaggregate and target high cost support at or below the wire center level); USAC, Disaggregation Map Search, <http://www.usac.org/hc/tools/disaggregation-maps/default.aspx> (search for study area code 381637) (displaying West River’s disaggregation maps for the Fort Yates, McLaughlin, and Selfridge wire centers).

<sup>61</sup> See Standing Rock Redefinition Petition at 8. Because some areas may be so sparsely populated and costly to serve that few, if any, carriers would build out their networks to those areas absent universal service support, the likelihood that a carrier could creamskim by serving those areas is lessened. Cf. *Highland Cellular Order*, 19 FCC Rcd at 6438, para. 33.

<sup>62</sup> See 47 C.F.R. § 54.202(c). The Commission may waive any provision of its rules for good cause shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *affirmed by WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972); *Northeast Cellular*, 897 F.2d at 1166. In sum, waiver of the Commission’s rules is appropriate if special circumstances warrant a deviation from the general rule, and such deviation will better serve the public interest than strict adherence to the general rule. *Northeast Cellular*, 897 F.2d at 1166. *Accord NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008).

<sup>63</sup> See Standing Rock ETC Petition at Exh. VIII.



extremely costly to Standing Rock and would provide little, if any, additional information, we believe that enforcing this rule would be unduly harsh in the unique circumstances of this case.

24. For all of these reasons, we find that designating Standing Rock as an ETC is in the public interest.

#### 4. Designated Service Area

25. Based on the record before us, we define Standing Rock's service area to consist of the McIntosh and Morristown wire centers within Qwest's service area; the portion of Qwest's Timberlake wire center within the Reservation's boundaries;<sup>64</sup> and the Fort Yates, McLaughlin, and Selfridge wire centers within West River's service area. The definition of Standing Rock's service area is conditioned on the consent of the North Dakota Commission to redefine the service area of West River, a rural telephone company. As articulated above, we believe that the public interest will be served by the designation of Standing Rock throughout these wire centers.

26. We propose to redefine West River's service area at the wire center level.<sup>65</sup> As discussed above, we do not believe that creamskimming is a significant concern because West River's territory is very sparsely populated and because the company has chosen to disaggregate and target its high cost support pursuant to Commission rules.<sup>66</sup> Furthermore, redefining West River's service area at the wire center level should pose minimal administrative burdens and there is no evidence in the record that the redefinition would undermine West River's ability to continue to serve its rural customers.<sup>67</sup>

27. In accordance with our rules, we will submit this order to the North Dakota Commission and request that the state commission treat it as a petition to redefine West River's service area.<sup>68</sup> Standing Rock's ETC designation in the Fort Yates, Selfridge, and McLaughlin wire centers, all of which fall within West River's service area, is subject to the North Dakota Commission's review and agreement with the redefinition proposed herein. We note that the state commission is uniquely qualified to examine the proposed redefinition because of its familiarity with the rural telephone company's service area in question. Upon the effective date of the agreement of the North Dakota Commission with our redefinition of West River's service area, our designation of Standing Rock as an ETC in the Fort Yates, McLaughlin, and Selfridge wire centers shall also take effect.<sup>69</sup> In all other areas for which this order designates Standing Rock an ETC, such designation is effective immediately. If the North Dakota Commission determines that it does not agree with the redefinition proposed herein, we will reexamine Standing Rock's petition with regard to redefining West River's service area.

<sup>64</sup> In the *Highland Cellular Order*, the Commission held that "a rural telephone company's wire center is an appropriate minimum geographic area for ETC designation," 19 FCC Rcd at 6438, para. 33, but it has not imposed a similar requirement on non-rural companies' service areas. In fact, the Commission has specifically encouraged state commissions to establish non-rural company service areas that better promote competition between competitive ETCs and non-rural incumbents. See *Universal Service First Report and Order*, 12 FCC Rcd at 8879, para. 184.

<sup>65</sup> We propose to redefine each wire center in West River's study area as a separate service area.

<sup>66</sup> See USAC, Disaggregation Map Search, <http://www.usac.org/hc/tools/disaggregation-maps/default.aspx> (search for study area code 381637) (displaying West River's disaggregation maps for the Fort Yates, McLaughlin, and Selfridge wire centers).

<sup>67</sup> See, e.g., *Federal-State Joint Board on Universal Service; North Carolina RSA 3 Cellular Telephone Company Petition for Designation as an Eligible Telecommunications Carrier in the State of North Carolina*, CC Docket No. 96-45, Order, 21 FCC Rcd 9151, 9158-59, paras. 25-27 (Wireline Comp. Bur. 2006).

<sup>68</sup> See 47 C.F.R. § 54.207(d)(1).

<sup>69</sup> See 47 C.F.R. § 54.207(d)(2). We reiterate that Standing Rock's designation is effective in the wire centers within West River's service area (*i.e.*, the Fort Yates, McLaughlin, and Selfridge wire centers) if and when the North Dakota Commission agrees with our redefinition.

28. We do not agree with Standing Rock's assertion that redefinition is unnecessary here or that the Commission alone can redefine the service areas of the rural telephone companies at issue.<sup>70</sup> In the case of an area served by a rural telephone company, the Act stipulates that such an area means a company's study area, "unless and until the Commission and the States . . . establish a different definition for such company."<sup>71</sup> The Act, therefore, contemplates a process that requires the participation of both the Commission and the states.<sup>72</sup> In this case, the South Dakota Commission chose not to comment on the merits of Standing Rock's petition because it would have an "opportunity . . . to review the FCC's proposed redefinition once that decision has been made by the FCC."<sup>73</sup> Standing Rock does not seek to serve all consumers within West River's existing service area; instead, it seeks only to serve those consumers living on the Reservation.<sup>74</sup> Because the company seeks to serve an area different than the service areas of the existing rural telephone companies serving the Reservation, therefore, redefinition is required.

29. We do not act at this time on Standing Rock's request to redefine and serve the following partial wire centers: (1) the St. Anthony wire center within West River's service area; (2) the Lemmon and Meadow wire centers within West River Cooperative's service area; (3) the Mobridge wire center within West River of Mobridge's service area; and (4) the Isabel wire center within Cheyenne River's service area.<sup>75</sup> In the *Highland Cellular Order*, the Commission stated that competitive ETCs should commit to serve a "minimum geographic area" within a rural telephone company's service area.<sup>76</sup> In the *ETC Designation Order*, the Commission held that a competitive ETC's service area should encompass entire rural wire centers and that the standard should be applied "rigorously."<sup>77</sup> Cheyenne River argues that these precedents are dispositive.<sup>78</sup> Standing Rock counters that the Commission has never directly spoken on the question of whether a Tribe should be allowed to serve all residents of its Reservation.<sup>79</sup> Because the Commission has never addressed that precise issue, we believe it prudent to refer to the Commission the question of whether Standing Rock should be permitted to serve partial rural wire centers in order to encompass the entire Reservation. We are instead seeking further comment so that the

<sup>70</sup> See Standing Rock Redefinition Petition at 5; Standing Rock Redefinition Reply at 1–3.

<sup>71</sup> See 47 U.S.C. § 214(e)(5).

<sup>72</sup> 47 U.S.C. § 214(e)(5); see Rural Telephone Companies Redefinition Comments at 2–3; South Dakota Commission Redefinition Comments at 1.

<sup>73</sup> South Dakota Commission Redefinition Comments at 2.

<sup>74</sup> Standing Rock ETC Petition at 6, 17.

<sup>75</sup> West River, West River Cooperative, West River of Mobridge, and Cheyenne River Sioux Telephone are rural telephone companies as defined in section 3 of the Act. See 47 U.S.C. § 153(37).

<sup>76</sup> *Highland Cellular Order*, 19 FCC Rcd at 6438, para. 33.

<sup>77</sup> *ETC Designation Order*, 20 FCC Rcd at 6406, para. 79.

<sup>78</sup> See Cheyenne River Redefinition Comments at 7; see also Rural Telephone Companies Redefinition Comments at 2–3.

<sup>79</sup> Standing Rock Redefinition Reply at 3–7. Some Tribally-owned ETCs serve entire wire centers that go beyond the corresponding Tribal reservation's boundaries. See, e.g., *Federal-State Joint Board on Universal Service; Hopi Telecommunications, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Hopi Reservation in Arizona*, CC Docket No. 96-45, Order, 22 FCC Rcd 1866, 1870, para. 9 (Wireline Comp. Bur. 2007) (designating Hopi Telecommunications, Inc.'s service area as three wire centers that covered the Hopi Reservation and also crossed into the neighboring Navajo Reservation); Cheyenne River Redefinition Comments at 3 (noting that Cheyenne River's designated service area does not parallel the boundaries of the Cheyenne River Sioux Reservation but instead includes, for example, the Isabel wire center that crosses onto the Standing Rock Sioux Reservation).

Commission can address this important matter based on a more robust record, taking into account the unique equities and policies that surround telecommunications policy on Tribal lands.<sup>80</sup>

## 5. Regulatory Oversight

30. Consistent with Commission rules, Standing Rock certified in its petition that it will use all of its federal high-cost support “for the provision, maintenance, and upgrading of facilities and services for which the support is intended” in the areas in which the company is designated as an ETC.<sup>81</sup> A newly designated ETC is eligible to receive support as of the effective date of its designation as an ETC, provided that it submits the data required by section 54.307(b) of the Commission’s rules within 60 days of the effective date. Therefore, if Standing Rock files the required data within the 60-day period, the company will be eligible to receive support as of the effective date of its designation. We direct Standing Rock to make all required filings with the Universal Service Administrative Company (USAC) under Part 54 of the Commission’s rules so that it may be eligible to receive high cost support.<sup>82</sup> We also direct USAC to work with Standing Rock as necessary for Standing Rock to make the required filings with USAC.

31. Standing Rock must meet and continue to meet each of the criteria required by the *ETC Designation Order*, and must submit information detailing how it has satisfied the criteria annually. These records and documentation must be filed with the Commission and USAC on October 1 of each year.<sup>83</sup> As noted above, Standing Rock has also committed to meeting applicable consumer protection and service quality standards.<sup>84</sup>

32. We find that reliance on Standing Rock’s commitments is reasonable and consistent with the public interest, the Act, and the Fifth Circuit decision in *Texas Office of Public Utility Counsel v. FCC*.<sup>85</sup> We conclude that fulfillment of these additional reporting requirements will further the Commission’s goal of ensuring that Standing Rock satisfies its obligation under section 214(e) of the Act to provide supported services throughout its designated service area.<sup>86</sup>

33. We note that the Commission may institute an inquiry on its own motion to examine any ETC’s records and documentation to ensure that the high-cost support it receives is being used “only for the provision, maintenance, and upgrading of facilities and services” in the areas where it is designated as an ETC.<sup>87</sup> Standing Rock is required to provide such records and documentation to the Commission and USAC upon request. We further emphasize that, if Standing Rock fails to fulfill the requirements of the Act, the Commission’s rules, or the terms of this Order after it begins receiving universal service support,

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<sup>80</sup> See *Comment Sought on Whether Standing Rock Telecommunications, Inc. Should Be Designated an Eligible Telecommunications Carrier in Partial Rural Wire Centers so that It Can Serve the Entire Standing Rock Sioux Reservation*, WC Docket No. 09-197, Public Notice, DA 10-1602 (Wireline Comp. Bur. rel. Aug. 24, 2010); 47 U.S.C. § 4(j) (authorizing the Commission to conduct its proceedings “in such a manner as will best conduce to the proper dispatch of business and to the ends of justice”); see also Letter from Heather Dawn Thompson, Counsel, Standing Rock Telecommunications, Inc. to Marlene H. Dortch, Secretary, FCC, at 1 (filed July 21, 2010) (asking the Bureau to bifurcate the ETC designation process along these lines).

<sup>81</sup> See *id.* at 4; see also 47 U.S.C. § 254(e); 47 C.F.R. §§ 54.313, 54.314.

<sup>82</sup> See generally 47 C.F.R. Part 54.

<sup>83</sup> See *ETC Designation Order*, 20 FCC Rcd at 6401–02, paras. 68–69.

<sup>84</sup> Standing Rock ETC Petition at 23; see *supra* paras. 15, 21.

<sup>85</sup> *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 417–18 (5th Cir. 1999).

<sup>86</sup> 47 U.S.C. § 214(e).

<sup>87</sup> 47 U.S.C. §§ 220, 403; 47 C.F.R. §§ 54.313, 54.314.

the Commission may exercise its authority to revoke Standing Rock's ETC designation.<sup>88</sup> The Commission also may assess forfeitures for violations of Commission rules and orders.<sup>89</sup>

#### 6. Anti-Drug Abuse Act Certification

34. Pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, no applicant is eligible for any new, modified, or renewed instrument of authorization from the Commission, including authorizations issued pursuant to section 214 of the Act, unless the applicant certifies that neither it, nor any party to its application, is subject to a denial of federal benefits, including Commission benefits.<sup>90</sup> Standing Rock has provided a certification consistent with the requirements of the Anti-Drug Abuse Act of 1988.<sup>91</sup> We find that Standing Rock's certification satisfies the requirements of the Anti-Drug Abuse Act of 1988, as codified in sections 1.2001–1.2003 of the Commission's rules.

### IV. ORDERING CLAUSES

35. ACCORDINGLY, IT IS ORDERED that, pursuant to the authority contained in section 214(e)(6) of the Communications Act of 1934, 47 U.S.C. § 214(e)(6), and pursuant to authority delegated in sections 0.91, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), Standing Rock Telecommunications, Inc. IS DESIGNATED AN ELIGIBLE TELECOMMUNICATIONS CARRIER for portions of its licensed service area on the Standing Rock Sioux Reservation in North Dakota and South Dakota, to the extent described herein.

36. IT IS FURTHER ORDERED that Standing Rock Telecommunications, Inc. SHALL SUBMIT additional information pursuant to section 54.209 of the Commission's rules, 47 C.F.R. § 54.209, no later than October 1, 2010, as part of its annual reporting requirements.

37. IT IS FURTHER ORDERED that the petition for redefinition filed by Standing Rock Telecommunications, Inc., IS GRANTED, to the extent discussed herein and conditioned on the consent of the North Dakota Public Service Commission to the proposed redefinition contained in Appendix D.

38. IT IS FURTHER ORDERED that a copy of this Order SHALL BE TRANSMITTED by the Wireline Competition Bureau to the North Dakota Public Service Commission, the South Dakota Public Utilities Commission, and the Universal Service Administrative Company.

<sup>88</sup> See *Declaratory Ruling*, 15 FCC Rcd at 15174, para. 15; see also 47 U.S.C. § 254(e).

<sup>89</sup> See 47 U.S.C. § 503(b).

<sup>90</sup> 21 U.S.C. § 862; 47 C.F.R. § 1.2002(a). Section 1.2002(b) provides that a "party to the application" shall include: "(1) If the applicant is an individual, that individual; (2) If the applicant is a corporation or unincorporated association, all officers, directors, or persons holding 5% or more of the outstanding stock or shares (voting/and or non-voting) of the petitioner; and (3) If the applicant is a partnership, all non-limited partners and any limited partners holding a 5% or more interest in the partnership." 47 C.F.R. § 1.2002(b); see *Section 214(e)(6) Public Notice*, 12 FCC Rcd at 22949.

<sup>91</sup> See Standing Rock ETC Petition at 23 and Exh. IX.

39. IT IS FURTHER ORDERED that pursuant to section 1.103 of the Commission's rules, 47 C.F. R. § 1.103, this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Sharon E. Gillett  
Chief  
Wireline Competition Bureau

## APPENDIX A

## List of Commenters

***Telecommunications Carriers Eligible for Universal Service Support, WC Docket No. 09-197,  
Comment Sought on Petition of Standing Rock Telecommunications for Designation as an Eligible  
Telecommunications Carrier, 25 FCC Rcd 352 (Wireline Comp. Bur. 2010)***

**Commenter****Abbreviation**

NA

**Reply Commenter****Abbreviation**

Cheyenne River Sioux Tribe Telephone Authority  
Cheyenne River Sioux Tribe  
South Dakota Telecommunications Association, North Dakota  
Association of Telecommunications Cooperatives, West River  
Cooperative Telephone Company, West River  
Telecommunications Cooperative

Cheyenne River  
Cheyenne River Sioux Tribe  
Rural Telephone Companies

***Telecommunications Carriers Eligible for Universal Service Support, WC Docket No. 09-197,  
Comment Sought on a Petition by Standing Rock Telecommunications, Inc. to Redefine Certain  
Rural Service Areas in North and South Dakota, 25 FCC Rcd 1828 (Wireline Comp. Bur. 2010)***

**Commenter****Abbreviation**

Cheyenne River Sioux Tribe Telephone Authority  
South Dakota Telecommunications Association, North Dakota  
Association of Telecommunications Cooperatives, West River  
Cooperative Telephone Company, West River  
Telecommunications Cooperative  
South Dakota Public Utilities Commission

Cheyenne River  
Rural Telephone Companies  
  
  
  
South Dakota Commission

**Reply Commenter****Abbreviation**

South Dakota Telecommunications Association, North Dakota  
Association of Telecommunications Cooperatives, West River  
Cooperative Telephone Company, West River  
Telecommunications Cooperative  
Standing Rock Telecommunications, Inc.

Rural Telephone Companies  
  
  
  
Standing Rock



## APPENDIX B

Standing Rock Telecommunication Inc.'s  
Designated Service Area

Wire Center	State	Incumbent Carrier	CLLI Code
Fort Yates*	North Dakota	West River Telecom.	FTYTNDXA
McIntosh	South Dakota	Qwest	MCINSDCO
McLaughlin*	North Dakota	West River Telecom.	MCLGSDXA
Morristown	South Dakota	Qwest	MRTWSDCO
Selfridge*	North Dakota	West River Telecom.	SLRGNDXA
Timberlake†	South Dakota	Qwest	TMLKSDCO

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\* Subject to the agreement of the North Dakota Public Service Commission to the Commission's proposed redefinition.

† Only those areas within the boundaries of the Reservation.

**APPENDIX C****Wire Centers Not Included in Standing Rock Telecommunication Inc.'s  
Designated Service Area At This Time**

<b>Wire Center</b>	<b>State</b>	<b>Incumbent Carrier</b>	<b>CLLI Code</b>
St. Anthony	North Dakota	West River Telecom.	STATNDXB
Lemmon	North Dakota/South Dakota	West River Cooperative	LMMNSDXA
Mobridge	South Dakota	West River Telecom. of Mobridge	MBRGSDXA
Meadow	South Dakota	West River Cooperative	MEDWSDXA
Isabel	South Dakota	Cheyenne River	ISBLSDXA

## APPENDIX D

## Proposed Redefinition of West River Telecommunications

Wire Center	State	CLLI Code
Beulah	North Dakota	BELHNDXA
Carson	North Dakota	CRSNNDXA
Center	North Dakota	CNTRNDXA
Elgin	North Dakota	ELGNNDXA
Flasher	North Dakota	FLSHNDXA
Fort Yates	North Dakota	FTYTNDXA
Glen Ullin	North Dakota	GLNLNDXA
Golden Valley	North Dakota	GLVYNDXA
Goodrich	North Dakota	GDRCNDXA
Hazen	North Dakota	HAZNNDXA
Hebron	North Dakota	HBRNNDXA
McClusky	North Dakota	MCCSNDXA
McLaughlin	North Dakota	MCLGSDXA
Mercer	North Dakota	MRCRNDXA
New Salem	North Dakota	NWSLNDXA
Pick City	North Dakota	PKCYNDXA
Selfridge	North Dakota	SLRGNDXA
Solen	North Dakota	SOLNNDXA
St Anthony	North Dakota	STATNDXB
Stanton	North Dakota	SNTNNDXA
Turtle Lake	North Dakota	TRLKNDXA
Underwood	North Dakota	UNWDNDXA
Washburn	North Dakota	WSBNNDXA
Zap	North Dakota	ZAP NDXA